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COMMONWEALTH v. PATTERSON et al.

March 18, 1920.

[102 S. E. 569.]

Taxation (§ 895 (1)*)—Transfer Tax Determined by Value of Estate Passing to Each Beneficiary, and Not by Value of Whole Estate.—The amount of the inheritance tax, under Acts 1916, p. 812. c. 484, should be determined by the value of the estate passing to each beneficiary, and not by the value of the whole estate; the beneficiary's share not being subject to the tax until the statutory exemption has been deducted therefrom.

Error to Chancery Court of Richmond.

Proceedings by A. W. Patterson and others for an order fixing transfer tax. Order rendered, and the Commonwealth brings error. Affirmed.

The Attorney General and *E. Warren Wall*, of Richmond, for the Commonwealth.

A. W. Patterson, of Richmond, for defendants in error.

CUMMING v. CUMMING.

March 18, 1920.

[102 S. E. 572.]

1. Divorce (§ 37 (22)*)—Cruelty of Wife, Not Causing Husband's Desertion, Must be Disregarded in Her Suit.—Where the conduct of a wife, relied on by the husband as constituting cruelty to him, did not originally cause their separation, nor in any way cause its continuance, both wholly due to willful desertion by the husband, the wife's conduct must be disregarded as justification or excuse for the desertion by the husband.

2. Contracts (§ 111*)—Antenuptial Contract between Parents of Illegitimate Child Illegal, because Contemplating Immediate Separation.—Antenuptial contract between father and mother of illegitimate child, whereby mother agreed to accept small weekly payments in full of her claims against the father's estate, having been actually made in contemplation of an immediate separation and desertion of the mother by the father, held illegal and void, and unenforceable against either party.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 580.]

3. Husband and Wife (§ 78 (3)*)—Postnuptial Contract, Contemplating Separation, Illegal.—A postnuptial contract between hus-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

band and wife, contemplating their immediate separation, is illegal and void.

4. Evidence (§ 437*)—Parol Evidence Admissible to Show That Antenuptial Contract Contemplated Separation.—In suit for divorce by the mother of an illegitimate child, who had made an antenuptial contract with her husband, the child's father, in fact intended to enable the father to separate from the mother and escape his obligation to support the child by making small weekly payments, parol evidence held admissible to show the illegality of the contract, in that it was intended to validate a separation after marriage.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 666.]

6. Divorce (§ 186*)—Effect of Death of Successful Defendant Pending Appeal.—Defendant husband having died pending the wife's appeal in her divorce suit, which had resulted in decree of divorce for the husband on his cross-bill, no decree will be entered by the Supreme Court, except to reverse the original decree under review in such of its holdings as are found to be erroneous, to which extent the decree of the Supreme Court will still be effective, as there can be no abatement of the original decree by reason of the death of party after appeal, while, under Code 1919, § 6167, the appellate court in its discretion may enter its decree dealing with the adjudications of the original decree as if no death had occurred.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 529.]

Appeal from Circuit Court, Elizabeth City County.

Suit for divorce by Mittie Ann Cumming against S. Gordon Cumming, wherein defendant husband filed cross-bill. From a decree granting him absolute divorce, plaintiff wife appeals. Reversed and remanded.

R. E. Byrd and *Richard B. Gwathmey*, both of Richmond, for appellant.

C. V. Meredith, of Richmond, and *C. Vernon Spratley*, of Hampton, for appellee.

DUNCAN *v.* BROADWAY NAT. BANK.

March 18, 1920.

[102 S. E. 577.]

1. Continuance (§ 51 (5*))—Further Continuance for Absent Witnesses Held Properly Refused.—Where case had been continued three times, chiefly for defendant's benefit, refusal to again continue the case on defendant's motion for absence of witnesses, two of which were nonresidents and one a resident whose whereabouts were

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